

Before the
Federal Communications Commission
Washington, D.C. 20054

RECEIVED
APR 12 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Federal-State Joint Board
Universal Service

)
)
)
)
)

CC Dkt. # 96-45

DOCKET FILE COPY ORIGINAL

COMMENTS OF

AMERICA'S CARRIERS
TELECOMMUNICATIONS ASSOCIATION
("ACTA")

Regulatory Flexibility Comments: April 12, 1996

Submitted by:

Charles H. Helein
General Counsel

Of Counsel:

Helein & Associates, P.C.
8180 Greensboro Drive
Suite 700
McLean, Virginia 22101
Telephone: (703) 714-1300
Facsimile: (703) 714-1330
e-mail: helein@digitalnation.com

No. of Copies rec'd
List ABCDE

204

COMMENTS

America's Carriers Telecommunication Association ("ACTA"), by its attorneys, submits its comments on the regulatory flexibility issues raised by the Commission's Notice of Proposed Rulemaking and Order Establishing Joint Board ("NPRM") in the captioned docket. ACTA is a national non-profit trade association representing the interests of third tier interexchange carriers, their customers and their suppliers, interested in the establishment and continued advancement of a more fully competitive marketplace for today's and for the 21st Century's communications services.

The scope of the issues in this proceeding are extremely broad, diverse and complicated. Intelligent suggestions and proposals on such a variety of subjects and their specific ramifications are, therefore, quite difficult to formulate. These comments will, therefore, suggest broad guidelines from the perspective of small business carriers about some of the more significant issues under consideration.

Regulatory Parity. Small telephone companies and/or rural telephones have enjoyed the sympathy of both Commission and state regulators for years. In ACTA's view it is long overdue that, if not the same solicitude, at least similar solicitude for small long distance carriers should be applied. The Commission is urged, therefore, in recognition of the public interests represented by small carriers, to fashion its decisions in this proceeding with a conscious eye as to the impact such decisions will or may have on small carriers.

ACTA believes this goal can be accomplished in part by establishing a few overriding guidelines. For example, when contribution standards are set to support universal services, the proper approach should be to recognize that such standards will, or may need to, differ depending

on the size, resources and nature of operations of the carriers that will be affected. Under the current USF methodology, the Commission, opting for administrative convenience, divided subject carriers by the number of presubscribed lines each carrier served (namely .05%).¹

This standard has caused significant financial harm to small carriers and has been counterproductive in advancing greater competition in the long distance segment of the industry. For example, by using the number of lines, small carriers, finding they have exceeded the .05% benchmark, are suddenly confronted with a significant monthly "tax" on their earnings -- the USF charges tariffed by NECA. In many cases, the small carriers which find themselves "inducted" into the elite group of carriers liable for USF charges, have obtained that status because of their marketing focus on single-line residential services.

Serving the residential market is a far more difficult proposition for small carriers than serving businesses. For one thing, the profit margin on residential lines is much smaller which means, to serve this market, profits must come from larger volumes of traffic, meaning larger numbers of users or larger numbers of prescribed lines. But, by being "successful," the small carrier may become its own worst enemy. The fact that smaller margins are realized on residential lines, means that some larger companies with less lines, but with higher margins, are actually larger in terms of revenues and profits, but nonetheless escape the USF "tax." In short, by expanding competition to include the lower-end residential market, some small carriers are actually being penalized by the USF charges. To exacerbate the situation, these small carriers pay over these charges to assist monopoly local exchange carriers, most of which are far larger

¹ Access Charges (Universal Service Fund & Lifeline Assessment Threshold), 66 RR 2d 1214 (1959).

in size and resources than smaller IXC's, and which may not even operate in the same area as served by the small IXC. The result of applying otherwise potentially good public policy, without regard for its actual practical effects, is to distort the marketplace and handicap competitors and competition. The situation only grows worse now that some of these same LEC's, being "subsidized" by USF funds, will become, or are direct competitors of, the small IXC's required to provide the subsidy.

Another area of concern is the inherent risk of small carriers never appearing on the policy radar screens of the decision makers and/or advisors. While much lip service is given to assisting small businesses, the real test of effective policies guarding the small businesses seeking to enter and maintain a presence in the communications marketplace, is evaluating the impact on small businesses of the policies themselves. The problems caused by the current USF charges is an example of how well-meaning policy, applied outside the context of market realities, turns out to defeat broader and more important policies. ACTA submits that the current policy on USF funding would not pass muster under the TA96 statutory requirement of "competitive neutrality."

Going forward, the Commission is urged to exercise additional diligence to evaluate policy alternatives, not only from the perspective of their impact on the highly visible carriers, but also on the small carriers and potential future entrants. ACTA does not seek "protectionism," but rational approaches to account for the disparities which exist in a market structure dominated by such radical differences in size and resources of competitors and by the fact that, small carriers are in the unenviable position whereby their main suppliers are, at the same time, their main competitors.

ACTA will review the comments submitted in the initial round. It hopes to be able to add more specific and focused comments and suggestions to the broad suggestions made in these comments, in aid of the small business regulatory flexibility analysis conducted by the Commission on universal service issues.

Respectfully submitted,

**AMERICA'S CARRIERS
TELECOMMUNICATION ASSOCIATION**

By: 

Charles H. Helein
General Counsel

Of Counsel:

**Helein & Associates, P.C.
8180 Greensboro Drive
Suite 700
McLean, Virginia 22102
Telephone: (703) 714-1300
Facsimile: (703) 714-1330
e-mail: helein@digitalnation.com**

CERTIFICATE OF SERVICE

I, Suzanne M. Helein, a secretary in the law offices of Helein & Associates, P.C., do hereby state and affirm that copies of the "Regulatory Flexibility Comments of America's Carriers Telecommunication Association" in CC Docket No. 96-45, were served via first class mail, this 12th day of April, 1996, upon those listed in the attached service list.



Suzanne M. Helein, Legal Secretary

The Honorable Reed E. Hundt, Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

The Honorable Andrew C. Barrett, Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

The Honorable Susan Ness, Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

The Honorable Julia Johnson, Commissioner
Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

The Honorable Kenneth McClure, Vice Chairman
Missouri Public Service Commission
301 W. High Street, Suite 530
Jefferson City, Missouri 65102

The Honorable Sharon L. Nelson, Chairman
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

The Honorable Laska Schoenfelder, Commissioner
South Dakota Public Utilities Commission
500 E. Capital Avenue
Pierre, South Dakota 57501

Martha S. Hogerty
Public Counsel for the State of Missouri
P.O. Box 7800
Harry S. Truman Building, Room 250
Jefferson City, Missouri 65102

Deborah Dupont, Federal Staff Chair
Federal Communications Commission
2000 L Street, N.W., Suite 257
Washington, D.C. 20036

Paul E. Pederson, State Staff Chair
Missouri Public Service Commission
P.O. Box 360
Truman State Office Building
Jefferson City, Missouri 65102

Eileen Benner
Idaho Public Utilities Commission
P.O. Box 83720
Boise, Idaho 83720-0074

Charles Bolle
South Dakota Public Utilities Commission
State Capital, 500 E. Capital Avenue
Pierre, South Dakota 57501-5070

William Howden
Federal Communications Commission
2000 L Street, N.W., Suite 812
Washington, D.C. 20036

Lorraine Kenyon
Alaska Public Utilities Commission
1016 West Sixth Avenue, Suite 400
Anchorage, Alaska 99501

Debra M. Kriete
Pennsylvania Public Utilities Commission
P.O. Box 3265
Harrisburg, Pennsylvania 17105-3265

Clara Kuehn
Federal Communications Commission
2000 L Street, N.W., Suite 257
Washington, D.C. 20036

Mark Long
Florida Public Service Commission
2540 Shumard Oak Boulevard
Gerald Gunter Building
Tallahassee, Florida 32399-0850

Samuel Loudenslager
Arkansas Public Service Commission
P.O. Box 400
Little Rock, Arkansas 72203-0400

Sandra Makeeff
Iowa Utilities Board
Lucas State Office Building
Des Moines, Iowa 50319

Philip F. McClelland
Pennsylvania Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, Pennsylvania 17120

Michael A. McRae
D.C. Office of the People's Counsel
1133 15th Street, N.W., Suite 500
Washington, D.C. 20005

Rafi Mohammed
Federal Communications Commission
2000 L Street, N.W., Suite 812
Washington, D.C. 20036

Terry Monroe
New York Public Service Commission
Three Empire Plaza
Albany, New York 12223

Andrew Mulitz
Federal Communications Commission
2000 L Street, N.W., Suite 257
Washington, D.C. 20036

Mark Nadel
Federal Communications Commission
1919 M Street, N.W., Room 542
Washington, D.C. 20554

Gary Oddi
Federal Communications Commission
2000 L Street, N.W., Room 257
Washington, D.C. 20554

Teresa Pitts
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

Jeanine Poltronieri
Federal Communications Commission
2000 L Street, N.W., Suite 257
Washington, D.C. 20036

James Bradford Ramsay
National Association of Regulatory
Utility Commissioners
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

Jonathan Reel
Federal Communications Commission
2000 L Street, N.W., Suite 257
Washington, D.C. 20036

Brian Roberts
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102

Gary Seigel
Federal Communications Commission
2000 L Street, N.W., Suite 812
Washington, D.C. 20036

Pamela Szymczak
Federal Communications Commission
2000 L Street, N.W., Suite 257
Washington, D.C. 20036

Whiting Thayer
Federal Communications Commission
2000 L Street, N.W., Suite 812
Washington, D.C. 20036

Deborah S. Waldbaum
Colorado Office of Consumer Counsel
1580 Logan Street, Suite 610
Denver, Colorado 80203

Alex Belinfante
Federal Communications Commission
1919 M Street, N.W.
Washington D.C. 20554

Larry Povich
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554